



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: August 13, 2014 REPORT NO: 14-58  
ATTENTION: Council President and City Council  
SUBJECT: TIERRASANTA (VIA DOMINIQUE) PUMP STATION – EMINENT DOMAIN

REQUESTED ACTION:

- 1) Authorizing a Resolution of Necessity pursuant to Code of Civil Procedure 1245.230 for the fee acquisition and temporary construction area permit over portions of Assessor Parcel 373-342-02 for the construction of the Tierrasanta (Via Dominique) Pump Station Project.
- 2) Authorizing the City Attorney's Office to institute an eminent domain proceeding pursuant to Code of Civil Procedure 1250.110 to acquire the property rights necessary for the Project and to request an Order of Pre- Condemnation possession of the property rights.
- 3) The Chief Financial Officer is authorized to expend finds not to exceed \$24,500.00 from CIP S-12040 – Tierrasanta (Via Dominique) Pump Station, Fund 700010, Water, for the site acquisition from Via Dominique Townhome Association and temporary construction area permit found necessary for the project.

STAFF RECOMMENDATION:

Approve the requested action.

SUMMARY:

Background: The City of San Diego Public Works Department is completing plans to construct a new 14 Million Gallon pump station in the area of the existing Via Dominique Pump Station located at 4701 Seda Drive in the Tierrasanta Community. As the existing pump station is reaching the end of its useful life, the proposed expansion of the Via Dominique Pump Station will provide for water supply demands projected to the year 2030.

The project includes the demolition of the existing Tierrasanta Temporary Pump Station located at 11100 Clairemont Mesa Blvd, installation of the new dual pump station at the Via Dominique location, and installation of approximately 3,000 feet of new 20-inch PVC water main along Clairemont Mesa Boulevard. Also included will be street paving, water services, and pedestrian ramps along the pipeline alignment.

Several community meetings were held at various locations to discuss the Via Dominique Pump Station project. To date staff has not been able to come to an agreement with the property owners, the Via Dominique Townhomes Association, as to the acquisition of the required property. This has been primarily due to the restrictive nature of the Association's "Conditions, Covenants, and Restrictions (CC&Rs)".

Authority to commence an eminent domain proceeding to acquire the required property is requested to ensure possession of the property in advance of an award of the construction contract for the Project.

#### Discussion: The Resolution of Necessity

California eminent domain law [Code of Civil Procedure §1230.010 et seq.] mandates before the City may commence a legal proceeding to acquire property for public use, the City Council must adopt a Resolution of Necessity [RON] by a two-thirds majority of the full City Council, describing the location of the property and the public necessity requiring the acquisition of the property, or property rights.

The City Council must make findings that 1] the public interest and necessity requires the Project for which the property is being acquired; 2] the Project has been planned and located in a manner most compatible with the greatest public good and the least private injury; 3] the property rights to be acquired are necessary for the Project; and 4] an offer to purchase the property rights has been made to the owners of the property, but has not been accepted. Code Civ.Pro. §§ 1240.010, 1245.230, 1245.240.

A RON may be adopted only after each person whose property is to be acquired has been given at least 15 days prior notice of the hearing where the RON will be considered. The property owner must be afforded the opportunity to provide the City with a written request to appear and be heard. Failure to provide a timely written request to the City Council constitutes a waiver of the right. Code Civ.Pro. §1230.040. A RON adopted by the City Council conclusively establishes the public necessity for the Project and establishes the Project has been planned and located in a manner most compatible with the greatest public good and least private injury. Code Civ.Pro. §1240.030.

#### The Eminent Domain Lawsuit

An eminent domain proceeding is governed by the rules that govern all civil actions. Code Civ. Pro. §1230.040. A complaint is filed in the Superior Court, a summons and the complaint is served on the property owner, and a Notice of the pendency of the proceeding [a Lis Pendens] is filed in the Office of the County Recorder. Code. Civ. Pro. 1250.110, 1250.150.

The probable amount of compensation to be paid for the property rights to be acquired is determined by a competent appraisal and is then deposited with the State Treasury. Code of Civ. Pro. §1255.010. At the time of the filing of the complaint and deposit of funds, the City may request an order for possession of the property from the court. Code Civ.Pro. §1255.410. The City

may settle the matter at any time with the property owner and request the funds on deposit with the State Treasury be paid or returned. Code Civ.Pro. §1255.030.

**1. Does the Public Interest and Necessity Require the Acquisition for the Project?**

Yes, approval of the eminent domain action to acquire the land serves the public interest and is necessary for completion of the project. The project is part of the City of San Diego, Public Utilities Department's Capital Improvement Program. It consists of the replacement of two existing pump stations that have reached the end of their service life and includes a new transmission water main along Clairemont Mesa Blvd. When at the end of their service lives, pump stations often times begin to run inefficiently, and may create potential for health and safety issues to the community. If this project is delayed, declaring this an emergency situation may be considered by the Public Utilities Department.

The Tierrasanta Community will be invited to give input into the facility's architecture and the landscape design to assure its appearance blends in well with the surrounding neighborhood. The new facility will be designed to accommodate the projected 3.8% population growth by 2030 forecasted by SANDAG, will combine the pumping requirements of both the Tierrasanta Temporary and Via Dominique pump stations at one location, and is essential for providing water to customers in the entire Tierrasanta Community, as well as providing them with mandated levels of fire protection in zones which do not have gravity reservoir storage. In summary, this new pump station represents an investment in the community to provide more reliable water service, modern fire flow protection and the capacity for future growth.

**2. Is the Project Planned or Located in a Manner that will be Most Compatible with the Greatest Public Good and Least Private Impact?**

Yes, this location was considered to be the most compatible for the new pump station since it minimizes impacts to the environment and the adjacent community. There will be minimal negative impact to native vegetation, there are no private residences located directly adjacent to the site boundaries, no extensive grading work or structure support devices will be required, there is adequate site access and yard area essential for maintenance utility equipment and vehicles, as well as areas for required surge protection tanks, and an emergency generator. In addition, at this location the new facility could be constructed without any disruption to the current operations of the two existing pump stations. The project will also include noise attenuation devices for the pump station, and street paving, water service connections and new pedestrian ramps along the pipeline alignment.

**3. Is the Acquisition Necessary for the Project?**

Yes, the proposed property is necessary to provide the needed level of functionality and reliability for facilities of this type. This location provides the conditions to deliver optimal water service to this area of the City. The topography, accessibility, minimum

impacts to the environment and the surrounding private infrastructures are the reasons that this has been determined to be the only feasible location for this project. Other city owned properties in this area were considered for the project, however after further assessments, were determined to have characteristics that would have made construction of the pump station cost excessive. The current Tierrasanta Temporary Pump Station location would be infeasible due to grading, structural, environmental, and fiscal issues on the property and would not meet the capacity that is required to meet the new standards and future water demands.

FISCAL CONSIDERATIONS:

Funds in the amount of \$24,500 necessary for the acquisition of a portion of APN 373-342-02 will be available from CIP S-12040, Tierrasanta (Via Dominique) Pump Station, Fund 700010, Water, for property acquisition and related expenses and temporary construction area permit.

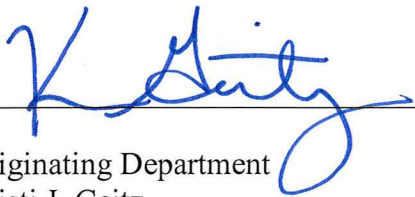
PREVIOUS COUNCIL and/or COMMITTEE ACTION:


TIERRASANTA (VIA DOMINIQUE) PUMP STATION MITIGATED NEGATIVE DECLARATION No. 317092 AND MMRP ADOPTED ON JULY 14, 2014

May 29, 2012, Resolution Number - R-307437, Award of Contract to Brown and Caldwell for design and support services for the replacement of the Tierrasanta (Via Dominique) Pump Station.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community meetings/tours: Tierrasanta Community Council- 2/20/13; Villa Dominique Townhomes Association- 4/5/13; Tierrasanta Courthomes Association- 5/16/13; Tour of the Rancho Penasquitos Pump Station- Villa Dominique Townhomes Association- (Facility Example) – 3/12/14

  
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Originating Department  
Kristi J. Geitz

  
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Deputy Chief/Chief Operating Officer  
Ron Villa